

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35711

STATE OF IDAHO,)	2009 Unpublished Opinion No. 577
)	
Plaintiff-Respondent,)	Filed: August 20, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
BRANDON LEE CHITTUM,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. R. Barry Wood, District Judge.

Order denying motion to withdraw guilty plea, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jennifer E. Birken, Deputy Attorney General, Boise, for respondent.

LANSING, Chief Judge

Brandon Lee Chittum appeals from the district court's denial of his presentence motion to withdraw his guilty plea to a charge of domestic violence. We affirm.

I.

FACTS AND PROCEDURE

Chittum was charged with felony domestic violence, Idaho Code § 18-918(2)(a), with an enhancement for committing the acts in the presence of children, I.C. § 18-918(4), and with misdemeanor intentional destruction of a telecommunication instrument, I.C. § 18-6810. It was alleged that, in the presence of the couple's two children, Chittum caused physical injuries to his wife by grabbing her by the arm and slamming her hand in a door and, when his wife attempted to call the police, grabbing the phone away from her. A no-contact order was entered prohibiting Chittum from contacting or communicating with his wife. After Chittum bonded out of jail, he was charged with two violations of the no-contact order in Minidoka County and with felony

stalking and two violations of the no-contact order in Cassia County. Chittum's wife filed for divorce.

Pursuant to a plea agreement, on June 23, 2008, Chittum pleaded guilty to felony domestic violence, I.C. § 18-918(2)(a). As part of the agreement the Minidoka County enhancement and all other charges in both counties were dismissed. On July 14, 2008, Chittum's wife obtained a decree of divorce. On July 25, 2008, and prior to sentencing, Chittum filed a motion to withdraw his guilty plea. After a hearing, the district court denied the motion. Chittum appeals from the subsequent judgment of conviction.

II.

ANALYSIS

Chittum asserts that the district court erred in denying his motion to withdraw his guilty plea. The standards governing such motions are well established. Presentence withdrawal of a guilty plea is not an automatic right; a defendant bears the burden of demonstrating a "just reason" for withdrawal of the plea. Idaho Criminal Rule 33(c); *State v. Arthur*, 145 Idaho 219, 222, 177 P.3d 966, 969 (2008); *State v. Stone*, 147 Idaho 330, 333, 208 P.3d 734, 737 (Ct. App. 2009); *State v. Nath*, 141 Idaho 584, 586, 114 P.3d 142, 144 (Ct. App. 2005). Whether to grant such a motion is left to the sound discretion of the district court, and such discretion should be liberally applied. I.C.R. 33(c); *Arthur*, 145 Idaho at 222, 177 P.3d at 969. When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the lower court reached its decision by an exercise of reason. *State v. Hedger*, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989). Appellate review of the denial of a motion to withdraw a plea is limited to whether the district court exercised sound judicial discretion as distinguished from arbitrary action. *Arthur*, 145 Idaho at 222, 177 P.3d at 969.

Chittum's motion to withdraw his plea stated:

This motion is made on the grounds and for the reason that Defendant's wife had filed for divorce. Defendant was depressed, and just wanted to get it over with. Defendant has had time to reconsider, and would like to exercise his right to present his defenses.

At the hearing on the motion, defense counsel stated that Chittum “wishes to proceed and exercise the defenses he may have” and further:

While he was married and had an ongoing relationship with his wife, he felt that he would accept the plea because of the consequences of going to trial and the impact that would have upon his wife. After having been divorced and understanding what he waived, he feels it would be just if he were able to now go back and exercise those rights where there is no possibility of a future relationship with his former wife.

The district court denied the motion on the ground that Chittum had failed to establish a just reason for withdrawal of the plea. For two reasons, we agree.

First, the motion was predicated on alleged facts about Chittum’s personal reasons for pleading guilty that do not appear in the record. Therefore, an evidentiary showing was required. When the stated grounds for a motion to withdraw a guilty plea require a presentation of evidence, the Idaho Rules of Evidence apply. I.R.E. 101; *Stone*, 147 Idaho at 333, 208 P.3d at 737. Chittum presented no evidence, relying instead upon the content of his motion and the oral representations of his attorney. Because Chittum did not submit any admissible evidence, by testimony or otherwise, to show that any of his factual assertions were true, the motion was not supported. *Id.*

Second, the only expressed basis for the motion was essentially that Chittum had simply changed his mind about his desire to plead guilty. Even if this reason had been supported with evidence, the trial court would have been well within the bounds of its discretion in finding that just cause was not shown.

For these reasons, we find no abuse of discretion by the district court. The order denying Chittum’s motion to withdraw his guilty plea is affirmed.

Judge PERRY and Judge GRATTON **CONCUR.**